

Memorandum



CITY OF DALLAS

DATE January 7, 2019

TO The Honorable Members of the Economic Development & Housing Committee:
Tennell Atkins, Chair, Rickey D. Callahan, Vice-Chair, Lee M. Kleinman,
Scott Griggs, Casey Thomas, II, B. Adam McGough, Mark Clayton, Kevin Felder,
Omar Narvaez

SUBJECT **Public Private Partnership Guidelines**

Summary

On January 7, 2019, this Committee will be briefed on Public Private Partnership Guidelines, as described under the *Public and Private Facilities and Infrastructure Act*, Texas Government Code, Chapter 2267.

Background

In 2011, the Texas Legislature enacted the *Public and Private Facilities and Infrastructure Act* to encourage private investment in public facilities and infrastructure.

Cities and other governmental agencies had already been using public-private partnership structures to accomplish projects such as university facilities and professional sports stadiums. The Act simply allows another method to procure such deal structures in order to monetize public real estate assets by tapping into the creativity and experience of the private sector.

The P3 statute authorizes, but does not require, local governments to adopt a formalized process contained in that statute to review proposed public private partnerships. El Paso, San Antonio, and Houston have adopted P3 guidelines, while Dallas, Fort Worth, and Austin have not.

Adopting P3 Guidelines would not prohibit the City from continuing to utilize existing procurement methods. Rather, it would add an additional procurement tool to the City's toolbox.

P3 Guidelines would allow for maximum flexibility when the City procures for facilities to be made available to the public or redevelopment of public land, as described in the Act.

Alternatives

The City may decline to adopt P3 Guidelines, in which case existing procurement laws would continue to be used to accomplish such projects.

Financing

No Cost Consideration to the City.

Coordination

Staff coordinated with Procurement Services staff and the City Attorney's Office to review the statute and prepare draft guidelines.

Recommendation

Staff recommends approval of P3 Guidelines to create another method of procurement for facilities for public use or redevelopment of public land.

Should you have any questions, please contact me at (214) 670-1696.

Courtney Pogue, Director
Office of Economic Development

c: The Honorable Mayor and the Members of City Council
T.C. Broadnax, City Manager
Chris Caso, City Attorney (Interim)
Carol A. Smith, City Auditor (Interim)
Billerae Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager

Majed A. Al-Ghafry, Assistant City Manager
Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Assistant City Manager and Chief of Resilience Officer
Directors and Assistant Directors

Public Private Partnership Guidelines

Economic Development and Housing Committee

January 7, 2019

Courtney Pogue, Director
Office of Economic Development
City of Dallas

Mike Frosch, Director
Procurement Services
City of Dallas



Presentation Overview

- Background
- Next Steps



Background

In 2011, the Texas Legislature enacted the *Public and Private Facilities and Infrastructure Act* to encourage private investment in public facilities and infrastructure.

Cities and other governmental agencies had already been using public-private partnership structures to accomplish projects such as university facilities and professional sports stadiums. The Act simply allows another method to procure such deal structures in order to monetize public real estate assets by tapping into the creativity and experience of the private sector.

The P3 statute authorizes, but does not require, local governments to adopt a formalized process contained in that statute to review proposed public private partnerships.

- ❖ El Paso, San Antonio, and Houston have adopted P3 guidelines.
- ❖ Dallas, Fort Worth, and Austin have not adopted P3 guidelines.

Background

As originally enacted in 2011, the statute allowed P3 projects to be procured two ways:

1. Jurisdictions could issue **RFPs or RFQs** to solicit projects.
2. Private entities with ideas for P3 projects could submit **unsolicited proposals** for review. If the jurisdiction was interested in the idea proposed in the unsolicited proposal, they could then issue an RFP for competing proposals.

The statute was amended in 2015 to remove the option for vendors to submit unsolicited proposals, and P3 projects can now **ONLY** be procured via RFP or RFQ.

Background

What is P3?

An alternative method of procurement that allows for maximum flexibility to achieve municipal goals and deliver a better value for taxpayers.

Haven't we already been doing public-private projects?

Many projects involving third parties have been accomplished via our existing procurement processes, since the City of Dallas has the authority to negotiate and enter into any contract consistent with applicable law so long as the partnership serves a public purpose.

Recent examples in Dallas include our Fair Park management contract and the formation of a local government corporation to manage development of the Trinity River recreational area.

Background

What types of projects can be procured via P3?

1. Public Use Facilities: Any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technology facility, or other similar facility currently available or to be made ***available to a governmental entity for public use***, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or
2. Public Land Developments: any improvements necessary or desirable to real property owned by a governmental entity, including the City.

Background

What is the goal of a P3 project?

Supports Public Sector Needs:

1. Budget flexibility, minimizes governmental debt
2. Private sector experience and expertise
3. Faster, more efficient delivery
4. Private sector shares in the risk

Supports Private Sector Needs:

1. Access to public land, incentives, or entitlements
2. Nonprofit donor preference for private control of a project

Background

How is P3 different from our existing procurement procedures?

- For projects that would cost more than \$5 million, the City would be required to engage outside experts to review the proposals.
- The P3 statute allows local governments to charge a reasonable fee to cover the cost of evaluating proposals, including the costs of external reviewers and advisors such as attorneys, consultants, or other advisors.
- The City would be required to make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating proposals.
- Additionally, there are required hearings, required notice and posting of proposals, and requirements that must be in the agreements between the contracting person and the City.

Background

Entity	Fee Structure
City of Houston	Case by case determination, but not less than \$2,500
City of San Antonio	\$2,500
City of El Paso	\$5,000 for internal review costs, plus the actual costs of any external vendors
City of Edinburg	\$5,000 for internal review costs, plus the actual costs of any external vendors
Texas Facilities Commission	Case by case determination based on complexity of project
TxDOT	\$10,000 for internal review costs, plus the actual costs of any external vendors
PROPOSED DALLAS FEE	\$2,500 for internal review costs, plus the actual costs of any external vendors

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Next Steps

- If the Committee is interested in moving forward with adoption of P3 Guidelines, an agenda item for approval of the P3 Guidelines will be considered on **January 23, 2019**.



Exhibit A – Draft P3 Guidelines

Public Private Partnership Program Guidelines

City of Dallas, Texas

Adopted by Resolution No. _____
on _____, 2019

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I. INTRODUCTION

A. ACT OVERVIEW

To assist municipalities with their growing infrastructure and government facility needs, the State of Texas enacted the Public and Private Facilities and Infrastructure Act (the “Act”) to allow greater use of public-private partnerships. The Act allows for partnerships between public and private entities as an alternate method of procurement to expedite the timing and reduce the costs of such projects. The purpose of the Act is to provide governmental entities with the greatest possible flexibility in contracting with Private Entities or other persons to provide public services through Qualifying Projects.

By enacting the Act, the Texas Legislature found that:

1. there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;
2. the public need may not be wholly satisfied by existing methods of procurement in which Qualifying Projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;
3. there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;
4. financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to Develop Qualifying Projects; and
5. authorizing private entities or other persons to Develop or Operate one or more Qualifying Projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

The Act became effective September 1, 2011 and is codified as Chapter 2267 of the Texas Government Code.



B. GUIDELINES OVERVIEW

On _____, 2019, the City Council passed Resolution No. 19-_____, electing to utilize public-private partnerships and adopting these Guidelines to encourage Private Entity participation, creativity, and competition, and to guide the selection of Qualifying Projects. The Guidelines will furnish the private sector with a predictable and uniform process to respond to solicitations for Qualified Projects. These Guidelines are intended to encourage competition and guide the selection of Qualifying Projects under the purview of the City. Nothing in these Guidelines shall prevent the City from utilizing other procurement laws or methods at its discretion, including for a project that meets the definition of a Qualifying Project.

C. DESIGNATED CONTACT

The City of Dallas designates the following representative to meet with Private Entities who are considering submitting a Proposal:

Mike Frosch, Director
Office of Procurement Services
City of Dallas
1500 Marilla 3FN
Dallas, TX
mike.frosch@dallascityhall.com
(214) 670-3874

The City's designee is available by appointment only, Monday to Friday between 9:00 a.m. and 5:00 p.m., CST excluding City holidays.

D. QUALIFYING PROJECTS

A public-private partnership is a contractual relationship between a public agency such as the City of Dallas and a Private Entity for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public financing. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared to deliver a facility and/or service (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) for the use of the general public and each sector shares in the potential risks of the timely and efficient delivery of the service or facility.

To be considered under the P3 Program a Proposal must meet the definition of a "Qualifying Project" as defined in the Act and these Guidelines. The City may approve as a Qualifying Project the Development or Operation of a facility needed by the City, or the design or equipping of a Qualifying Project, if the City determines that the project serves the public purpose of the Act. This public purpose determination can be made if:



1. There is a public need for or benefit derived from the project;
2. The estimated cost of the project is reasonable in relation to similar facilities; and
3. The plans will result in the timely Development or Operation of the Qualifying Project.

II. GENERAL PROVISIONS

A. DEFINITIONS

The following terms shall have the meanings set forth below:

Act means the Public and Private Facilities and Infrastructure Act, Chapter 2267, Texas Government Code.

Affected Jurisdiction means any county or municipality in which all or a portion of a Qualifying Project is located.

City means the City of Dallas.

City Council means the governing body of the City of Dallas.

City Manager means the City Manager of the City of Dallas, or a designated assistant city manager, chief, or department director.

Comprehensive Agreement means the comprehensive agreement between the Contracting Person and the City for the Development or Operation, or both, of a Qualifying Project. Comprehensive Agreements are subject to review and approval of the Oversight Committee and require approval by resolution of the City Council.

Contracting Person means a person who enters into a Comprehensive or Interim Agreement with the City.

Develop or **Development** means to plan, design, develop, finance, lease, acquire, install, construct, or expand a Qualifying Project.

Financial Analysis means a review of a proposed Qualifying Project that includes, at a minimum, a cost-benefit analysis; an assessment of opportunity cost; consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and consideration of the results of all studies and analyses related to the proposed Qualifying Project.



Guidelines means this P3 Program guideline document.

Interim Agreement means an agreement, before or in connection with the negotiation of the Comprehensive Agreement, between the City and a Contracting Person for the Development or Operation, or both, of a Qualifying Project. The Interim Agreement may authorize the Contracting Person to begin activities or project phases related to the Qualifying Project including, but not limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities, or any other phase of the Qualifying Project. Interim Agreements are subject to review and approval of the Oversight Committee and require approval by resolution of City Council.

Operate or **Operation** means to finance, maintain, improve, equip, modify, repair, or operate a Qualifying Project.

Oversight Committee means a committee formed by the City's designated representative identified in Section I.C, consisting of qualified professionals of the City with expertise in the development and operation of Qualifying Projects in accordance with the Act.

P3 Program means the City's public-private partnership program implemented in accordance with the Act.

Private Entity means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

Proposal means a requested submittal for a Qualifying Project accepted by the City for a detailed analysis and evaluation in response to an RFP or RFQ that complies with the requirements of Section V.B below.

Qualifying Project means:

- (A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technology facility, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or



(B) any improvements necessary or desirable to real property owned by a governmental entity, including the City.

RFP means a request for proposals.

RFQ means a request for qualifications.

B. GENERAL PROPOSAL SUBMISSION PROCESS

The City may from time to time identify development opportunities and initiate the process for review and approval of proposals. The process for receipt and review of a proposal is initiated by a solicitation by the City in the form of an RFP or an RFQ.

The P3 Program is a flexible development tool that allows the use of innovative financing techniques. Private Entities are encouraged to include innovative financing methods, including the imposition of user fees or other forms of service payments, in their proposal. The Contracting Person can be involved in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management.

Proposals should include a concise description of the Private Entity's capabilities to complete the Qualifying Project. Proposals must include a scope of work and a financial plan for the Qualifying Project, containing enough detail to allow a Financial Analysis by the City.

As provided in the Act, the City reserves the right, on a case-by-case basis, to conduct the analysis of the Proposal with internal resources or to contract with outside advisors or consultants to provide this service. In either case, the City may request additional financial and/or other relevant information in order to complete its analysis. The City may, at any time, request in writing that the proposer clarify its submission.

The P3 Program is intended to encourage Proposals from the private sector that offer private financing in support of a Qualifying Project, which may include commensurate risk to the Private Entity, but may also benefit the Private Entity through innovative approaches to project financing, development, and use. Proposals may include in-kind consideration, in an amount that is not less than the fair market value of the real property interest; including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation. The qualifications, capabilities, resources and other attributes of a Private Entity and its whole team shall be carefully examined for every Qualifying Project. In addition, Private Entities shall be held strictly accountable for representations and information provided regarding their qualifications, experience or other content in their Proposals, including all specific aspects of proposed plans to be performed by the Private Entity.



C. TEXAS PUBLIC INFORMATION ACT

The City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Most information collected, assembled, or maintained by the City in connection with the transaction of official business is public information subject to disclosure upon written request. The Public Information Act exempts certain categories of information from required public disclosure. The Office of the Attorney General determines whether information may be withheld, not the City. All information provided to the City will be handled in accordance with the Act and the requirements of the Texas Public Information Act while in the City's possession. All documents submitted under these Guidelines should be regarded as public records and subject to disclosure; provided however, such documents will be held in confidence by the City as required by the Act and to the requirements of the Public Information Act. A Private Entity may identify those specific portions of a Proposal that the Private Entity considers to be trade secrets or confidential commercial, financial, or proprietary information. The City will disregard blanket statements regarding the confidentiality of information.

The City will process any third-party request for disclosure of information comprising all or part of the response to the solicitation or other information in accordance with the procedures prescribed by the Texas Public Information Act. Private Entities are directed to the Attorney General's web site (www.oag.state.tx.us) which is the City's reference for information concerning the application of the provisions of the Public Information Act.

D. ADJUSTMENT OF TIMELINES AND PROCEDURES

Except for specific time periods and procedures established in the Act, the City Manager may accelerate and modify the solicitation, evaluation, selection, review, and documentation timelines and procedures set out in these Guidelines for proposals involving a Qualifying Project considered a priority by the City; and may extend the timelines for such additional periods of time and add procedures as are determined by the City Manager to be necessary or convenient to provide for a fair and complete evaluation and selection process. In determining whether to authorize additional time and procedures, the City Manager will consider the complexity of the proposed Qualifying Project.

E. RESERVATION OF RIGHTS

The City reserves all rights available to it by law in administering these Guidelines, including without limitation the right in its sole discretion to:



- a. withdraw a solicitation, including an RFP or RFQ, at any time and issue a new request;
- b. reject any and all Proposal submittals at any time;
- c. terminate evaluation of any and all Proposal submittals at any time;
- d. suspend, discontinue, or terminate either Interim or Comprehensive Agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;
- e. negotiate with a proposer without being bound by any provision in its Proposal;
- f. negotiate with a proposer to include aspects of unsuccessful Proposals for the project in the Interim or Comprehensive Agreement;
- g. request or obtain additional information about any Proposal from any source;
- h. modify, issue addenda to, or cancel any solicitation including an RFP or RFQ;
- i. waive deficiencies in a Proposal submittal, accept and review a nonconforming Proposal submittal, or permit clarifications or supplements to a Proposal submittal; or
- j. waive, revise, supplement, or make substitutions for all or any part of these Guidelines.

F. REQUEST FOR INFORMATION

At any time prior to the City's issuance of an RFQ or RFP, the City may solicit a request for information to assist with the scoping and feasibility analysis of a particular Qualifying Project.

G. CONSENT

In submitting any Proposal, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the provisions of these Guidelines and any applicable solicitation.

H. COSTS

Except as specifically provided in these Guidelines, under no circumstances will the City or any of its agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise obligated to, reimburse the costs incurred by any proposer, whether or not selected for negotiations, in developing Proposals or in negotiating agreements.



III. SOLICITED PROPOSALS

A. PROPOSAL

The City, in accordance with the provisions of these Guidelines, may invite bids or Proposals from Private Entities for purposes that constitute a Qualifying Project. The procedures and requirements applicable to any solicited Proposal shall be specified in the solicitation for that Proposal.

B. RFQ

The City may issue an RFQ for a Qualifying Project setting forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information as the City considers relevant or necessary in the RFQ and will publish and advertise it as provided in Section III.D. The City may also elect to furnish the RFQ to businesses in the private sector that the City believes might be interested and qualified to participate in the Qualifying Project which is the subject of the RFQ. At its sole option, the City may elect to furnish conceptual designs, fundamental details, technical studies and reports, or detailed plans of the proposed Qualifying Project in the RFQ. The RFQ may request one or more conceptual approaches to bring the project to fruition.

The City, after evaluating the qualification submittals received in response to a RFQ, will identify and approve a "short-list" that is composed of those Private Entities that are considered most qualified to submit Proposals for a proposed Qualifying Project. In evaluating the qualification submittals, the City will consider objective evaluation criteria that the City considers relevant to the project, which may include among other things the Private Entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The RFQ will include the criteria used to evaluate the qualification of submittals and the relative weight given to the criteria. The City shall advise each entity providing a qualification submittal whether it is on the short-list of qualified entities.

C. RFP

The City may issue an RFP consisting of the submission of detailed documentation regarding the designated Qualifying Project. The response to any RFP shall be a Proposal and include the information and be in the format set out in Section V.B. When the process is commenced with a RFQ, the RFP will be limited to those Private Entities qualified for the short-list in accordance with Section III.B.



D. SOLICITATION

All solicitations of a RFQ or RFP will be by issuance of a written request. The City will publish and advertise a notice on the City's Office of Procurement Services departmental website. The notice shall summarize the Qualifying Project, identify the proposed location of each project, and include specific information and documentation regarding the nature, timing, and scope of the Qualifying Project. The notice shall also state that the City will accept Proposals for a period of 45 days after the initial publication of the notice, or such lesser or additional time as authorized by the City Manager. Only Proposals that comply with the requirements of the Act, these Guidelines, and the City's solicitation and which contain information sufficient for meaningful evaluation will be considered. Proposals will be evaluated by the City after identification of those Proposals determined to be in compliance, based on the evaluation criteria set forth in the solicitation.

In order to (i) provide an effective analysis, and (ii) assist with the negotiation of an Interim and/or Comprehensive Agreement, the City may engage professional financial, technical, legal and other necessary advisors or consultants having appropriate experience in analyzing innovative financing methods, complex real estate development methods, and public-private partnership proposals. For a Proposal with an estimated cost of \$5 million or more for construction or renovation of a Qualifying Project, review by an architect, a professional engineer, and a registered municipal advisor not otherwise employed by the City is mandatory in order to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a Qualifying Project, in conformance with Sec. 2267.052 of the Act.

E. PROPOSAL EVALUATION AND SELECTION

All solicited RFP's and RFQ's shall be analyzed by an Oversight Committee appointed by the City's designated representative identified in Section 1.D, and any qualified professionals retained by the City on the recommendation of the Oversight Committee. Based on the evaluation criteria described in Section VI, the Oversight Committee will rank all Proposals that are complete, responsive, and in conformance with the requirements of these Guidelines, and may select the proposer whose Proposal offers the apparent best value to the City.

The Oversight Committee will submit a recommendation to the Economic Development and Housing Committee regarding approval of the Proposal it ranks as providing the apparent best value to the City. The Economic Development and Housing Committee of the City Council may approve or disapprove the recommendation, and if approved, will recommend approval by the City Council. Following receipt of comments from Affected Jurisdictions and the public in response to the City's notice and hearing as provided in Section VII, the City may award the Qualifying Project to the apparent best value proposer



by resolution of the City Council. The Interim or Comprehensive Agreement will be negotiated and signed by the proposer prior to City Council action, but the award will be subject to any necessary federal action, submission of required bonds or any other required documentation, review by the Oversight committee, execution of the agreement by the City Manager, approval as to form by the City Attorney's Office and satisfaction of such other conditions identified in the solicitation.

In the alternative, the Oversight Committee may determine not to proceed further with any Proposal.

IV. PROPOSAL PREPARATION AND SUBMISSION

NOTE: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GUIDELINES, PRIVATE ENTITIES MAY NOT CONTACT OFFICIALS OR EMPLOYEES OF THE CITY, ANY ELECTED OR APPOINTED OFFICIAL, OR STATE EMPLOYEES ABOUT ANY MATTER IN THIS SOLICITATION DURING THE SOLICITATION.

The City shall not be liable for any cost incurred by a Private Entity in preparing, submitting or presenting any Proposal and in satisfying any demonstration or other requirements for an unsuccessful Proposal. All submittals, at a minimum, shall provide the following unless a waiver of the requirement or requirements is agreed to in writing by the City.

1. All Proposals must be organized in the manner outlined below and submitted with the applicable review fee defined in Section VI.A of these Guidelines. All Proposals shall be submitted as 1 original, 10 copies, and 10 electronic copies (Word or searchable PDF format on flash drive). The original copy containing original signatures shall be marked ORIGINAL on the cover letter.
2. The Private Entity shall also submit trade secrets, financial records, proprietary or other confidential records exempt from disclosure under Government Code Section 552.101 in a separate, sealed envelope, designated on the cover as CONFIDENTIAL MATERIALS, and include a cover letter listing all exempt material. The Private Entity must clearly mark any material believed to be a trade secret, confidential, or proprietary information protected from disclosure under applicable law. Such material must be clearly marked in all caps as CONFIDENTIAL using a word processing watermark or stamp. Handwritten notices of confidentiality may be disregarded.
3. Proposals shall be packaged and submitted in the following format:
 - i. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.



- ii. The submittal shall be divided into tabbed sections as follows:
 - **TAB 1: Executive Summary**
 - **TAB 2: Private Entity and Team**
 - **TAB 3: Qualifications and Financial Capacity**
 - **TAB 4: Proposal**
 - **TAB 5: Project Analyses**
 - **TAB 6: Project Financing**
 - **TAB 7: Community Impact**
 - **TAB 8: Miscellaneous**
 - **TAB 9: Addenda**
 - iii. The contents shall be printed on spiral bound 8½" x 11" paper (except A/E drawings and renderings).
 - iv. Drawings shall be printed no larger than 24" x 36".
 - v. Supplemental materials in alternate formats may be included in **TAB 8** to describe the Proposal in more detail.
4. All submissions shall be addressed to the City's designated representative in a sealed envelope marked:
- DO NOT OPEN IN MAILROOM
Solicitation Number
Proposer's Name
Mailing Address
5. To the greatest extent possible, the submitted Proposals shall be sufficient to convey the experience and capacity of the development team, the overall quality and character of the Qualifying Project, as well as the financial and implementation strategies to ensure successful completion of the Qualifying Project. The submittal should be organized in the following order and tabbed in accordance with this section. All submittals, at a minimum, shall provide the following:

TAB 1: COVER LETTER AND EXECUTIVE SUMMARY. Provide a cover letter, signed by an authorized representative of the Private Entity representing that all information in the Proposal is true and accurate, and an executive summary that highlights the key components of the Qualifying Project, including but not limited to describing the Private Entity, its qualifications and experience with similar projects, highlights of the Proposal and Qualifying Project analyses, and the community impact and benefits of the Qualifying Project.



TAB 2: PRIVATE ENTITY AND TEAM

A. Identify the Private Entity:

- i. Identify the legal structure of the Private Entity or consortium of private entities who will be directly involved in the Qualifying Project and the members or principals of same making the proposal;
- ii. For the Private Entity and each member or partner thereof, provide proof of authority to do business in Texas and, as applicable, a certificate of active status from the Texas Comptroller of Public Accounts;
- iii. Identify the person(s) in charge of negotiations, key personnel who will be involved in decision making, and the representative authorized to sign on behalf of the Private Entity;
- iv. Provide a list of each member, partner, or other principal including the relevant company name, title, address, telephone, and email of each team member; and
- v. Identify any persons known to the Private Entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Qualifying Project.

B. Identify the Team:

- i. Provide a list of any selected or prospective professional or consultant which may include, but are not limited to analysts, architects, engineers, contractors, legal counsel, marketing firms, and real estate brokerage and property management firms;
- ii. Identify the persons or entities that will provide design, construction, and completion guarantees and warranties;
- iii. Provide an organizational chart that clearly illustrates the legal structure of the team and identifies the role of each team member, including design professionals, consultants, or major contractors, participating in the Development or Operation of the Qualifying Project; and
- iv. Describe the management structure and the role each team member or partner in the Qualifying Project. Confirm that no team member has a conflict of interest or prohibited employment as described in the Act.

TAB 3: QUALIFICATIONS AND FINANCIAL CAPACITY

- A. **Qualification.** The Private Entity must provide demonstrable experience in the Development and Operation of Qualifying Projects of similar complexity, scope, and scale to the proposed project. The submission must describe relevant experience with respect to the Development and Operation of other commercial



or public-private partnership projects, and clearly distinguishing the experience of the Private Entity (including joint venture partners) from that of consultants and other team members. To substantiate experience and ability to perform the following information shall be provided:

- i. Describe the length of time in business, business experience, public sector experience, and other engagements of the Private Entity or consortium of Private Entities;
- ii. Provide resumes and work experience of each team member;
- iii. For the Private Entity or consortium, any joint venture partners, the contractor and all major subcontractors to be involved in the Qualifying Project, provide a statement listing all prior projects and clients for the past 5 years, and contact information for same;
- iv. For the Private Entity or consortium and any joint venture partners, provide the composition of current real estate portfolios, including the size, value, years of ownership, asset performance, and any other relevant information; and
- v. For the Private Entity or consortium and any joint venture partners, provide at least 3 development references (name, title, entity, telephone number and contractual relationship) that can be contacted with respect to current and past project experience;
- vi. For the Private Entity or consortium and any joint venture partners, provide a listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing method, sources, and amounts, and financial commitments required of the Private Entity, consortium, or joint venture partner.

B. Financial Capacity. The Private Entity must establish and demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the Qualifying Project in a professional and timely manner. To substantiate financial capacity, the following information must be provided:

- i. A qualification statement that reviews all relevant information regarding financial resources of each Private Entity, consortium, or joint venturer, including but not limited to bonding capacities and insurance coverage;
- ii. The most recent credit report or Dun & Bradstreet report and certified financial statements for the past 4 years of each Private Entity, consortium, or joint venturer, and each member or partner of each with an equity interest of 5% or greater; and
- iii. For the Private Entity or consortium and any joint venture partners, provide at least 3 financial references (name, title, entity, telephone number and contractual relationship) that can be contacted with respect to current and past project experience.



TAB 4: PROPOSAL

Provide an overview of the Qualifying Project including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, shall include concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the Qualifying Project. The required renderings and drawings include:

A. Concept Plan

- i. **Concept Renderings:** Provide a conceptual site plan that characterizes the context of the design of the Qualifying Project, which at a minimum, shall include proposed land use and the approximate location and size of proposed structures or facilities, and the relationship of the Qualifying Project to the principal street and the surrounding area. To the extent the Private Entity has identified the preliminary programming of facilities, including the mix of uses, square footage(s), anticipated total project cost and cost per square foot, total parking spaces, parking allocations (shared or exclusive), and types of parking (e.g. structured or surface); describe the proposal.
- ii. **Concept Site Plan:** The site plan shall encompass the subject property and portions of contiguous parcels, including landscape and urban design concepts. The site plan shall also indicate all major pedestrian entrances, all proposed outdoor areas, and the circulation plan showing how the Qualifying Project relates to public rights-of-way to and within the site for walking, cycling, public transportation, and motor vehicles. Summarize the preliminary programming of facilities, including if any, the mix of uses, square footages, total parking spaces, parking allocations (shared or exclusive), and types of parking (e.g. structured or surface).
- iii. **Elevations:** Provide exterior building elevations, illustrating the massing, openings, and any related elements.

B. Project Development Plan.

- i. Describe the project development plan, general approach and strategy to advancing project development, the results expected from implementation of the plan and the critical factors for the project's success.
- ii. Provide an implementation plan and strategy to develop, design, construct and deliver the project. Submit a conceptual development implementation plan with a preliminary schedule including construction start and completion dates, final acceptance dates, and other major milestones.
- iii. Describe the qualified personnel, material, and equipment resources available to the proposer that it will commit to the project. Team roles and responsibilities must be specifically described, including the use of major subcontractors and professional consultants. Discuss the current work



backlog of each major participant and the capacity to perform the work. Describe with specificity the turnover history of key personnel during the course of similar projects listed in the submittal.

- iv. Based on knowledge of the surrounding area, adjacent land use and the proposed Qualifying Project, provide a list of factors that may impact the Qualifying Project and the existing neighborhood or landowners, including potential political, economic, transportation, and environmental factors. Identify any anticipated public support or opposition for the project and any Affected Jurisdictions.

C. Project Financial Plan.

- i. Describe the proposed business arrangements (i.e. performance based infrastructure, participation rent, concessions, parking management agreements, service agreements, etc.).
- ii. Describe the plan for the Development and Operation of the Qualifying Project showing the anticipated schedule of when funds will be required and from what source.
- iii. Describe the level and nature of the City's participation sought by the proposer in connection with the project's development and implementation.
- iv. Provide a preliminary schedule including permits and approvals from any federal, state, or local agencies to the extent such are required, and timing of any contemplated requests for federal, state, or local resources, and the initiation, construction phasing, completion, and opening of the Qualifying Project including major milestones and the proposed major responsibilities and timeline for activities to be performed by the City and the Private Entity.
- v. To the extent the Private Entity has identified federal, state, or local funding sources, describe such sources.
- vi. To the extent the Private Entity has identified the type of user fees, lease payments, and other service payments over the term of any applicable agreement and the methodology for calculation; describe such proposal.

D. Terms, Special Conditions and Other Considerations. This section is reserved for a description of any special conditions the proposal may offer to or request from the City.

- i. State the terms offered for the Qualifying Project.
- ii. State any contingencies or conditions requested by the Private Entity.
- iii. Identify any additional terms or conditions to be included as part of the negotiation process. Include a discussion of any trades or swaps of property and special legislation or plan amendments required to facilitate the Qualifying Project.



TAB 5: PROJECT ANALYSES.

In this section include the project analyses that support the business case of the Qualifying Project. The Project Analysis section shall be categorized into four sub-tabbed sections as follows: (1) location and site analysis, (2) marketing and competitive analysis, (3) financial analysis, and (4) political and legal analysis:

- A. **Location and Site Analysis.** Describe how the proposed design of the improvements and the attributes of the site will generate maximum financial, economic, and social benefits, and list any public utility facilities that will be affected by the Qualifying Project and a statement of the plans to accommodate the affected facilities.
- B. **Market and Competitive Analysis.** Provide a market study that supports the revenue assumptions and viability of the Qualifying Project. To indicate feasibility forecast the supply and demand relationship, including but not limited to demographic data, traffic counts, rent levels, and absorption rates. Include any supporting due diligence studies, analyses, or reports.
- C. **Construction Schedule.** Provide a conceptual time line identifying all the stages of project development from design to completion of turn-key project. Provide a construction time line setting out the work schedule for the project from the design stage to project acceptance by the City.
- D. **Political and Legal Analysis.** Provide an explanation of how the Qualifying Project will complement or comply with the City's Market Value Analysis, Comprehensive Housing Policy, Economic Strategic Plan, aviation land use studies, and/or other relevant city plans and policies. List all permits and approvals required for the development and completion of the Qualifying Project from federal, state, or local agencies. Identify any federal, state, or local resources that the Private Entity contemplates requesting for the Qualifying Project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.

TAB 6: PROJECT FINANCING

A. Financial Analysis

- i. Explain the financing plan for the Qualifying Project. Identify the sources and amounts of debt and equity to be used to capitalize the Qualifying Project, and the relationship of the Private Entity to each (e.g., outside lender, parent company, etc.).
- ii. Provide the following information:
 - 1. Loan commitment letters and contact information for funding sources;



2. The sources and anticipated amounts of working capital to cover Operating costs and to adequately maintain operations from the start-up through completion; and
 3. Letters from lending institutions dated within 3 months of the submission that demonstrate the existence of liquid assets or suitable unencumbered lines of credit to carry out the predevelopment activities. Evidence of the Private Entity's liquid assets or some acceptable form of equity shall be equal to the equity requirements of the prospective construction lender.
- iii. To the extent the Private Entity has identified, applied for, or plans to apply for federal, state, or local funding sources, describe such sources.
 - iv. Include any other information necessary for the City to complete a Financial Analysis of the proposal.

B. Project Budget

- i. Using standard estimating techniques provide a development budget detailing any anticipated land acquisitions, the anticipated pre-development costs, and hard and soft costs from construction through occupancy.
- ii. The budget should include cost estimates to pay for the relocation of any utility facilities which will be displaced as a result of project development.

C. Proforma Financial Statements

- i. Provide a discounted cash flow analysis, for the duration of the Qualifying Project, including but not limited to: estimates of costs, operating expenses, capital reserves including replacement and re-tenanting reserves, net operating income, debt service, partnership percentages, disposition benchmarks, and calculations of net present value, internal rate of return.
- ii. Provide projected balance sheet, statement of losses and earnings, and income statement for the first year of operation.

D. Bond Requirements

- i. Provide executed bond as required by the City's solicitation and by the Texas Government Code, Chapter 2267, to proceed with review of proposal.

TAB 7: COMMUNITY IMPACT

- A. State the community benefits, including the economic impact and tax revenues, the Qualifying Project will have on the City.
- B. Estimate the number of jobs to be generated for area residents and level of pay and fringe benefits of such jobs.
- C. Project the number and value of subcontracts generated for area subcontractors.



TAB 8: MISCELLANEOUS

Use this section to present additional information such as letters of recommendation, letters of interest from prospective lenders or tenants, additional information concerning the development team, and other information that supports the Proposal.

TAB 9: ADDENDA

Use this section to present any item cited or referenced in the proposal.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

A. PROPOSAL EVALUATION AND FEE

Along with the submission of a Proposal, each proposer shall submit to the City a non-refundable review fee in accordance with Section 2267.053(d) of the Act in the amount of Two Thousand Five Hundred and No/100 (\$2,500.00). The review fee shall be made by money order or check made payable to the City of Dallas and shall be used to cover the City's internal costs of processing, reviewing, and evaluating the proposal as permitted by the Act. In addition to the City's review fee, proposers shall pay the fees of any advisors, attorneys, or consultants engaged by the City to complete evaluation of the proposal. Payment shall be made in the manner and amounts set out in the RFQ or RFP as applicable.

Once the proposer has submitted the Proposal and review fee, and the deadline to submit additional proposals has passed, the Office of Procurement will submit each Proposal to the Oversight Committee. Within 90 days from receipt of the Proposals, the Oversight Committee shall evaluate the Proposal, select the most advantageous Proposal, negotiate a contract with the Proposer and present the proposed contract to the Economic Development and Housing Committee for a determination of whether a recommendation to enter into the contract shall be made to the City Council. The proposer shall be notified in writing of the City's decision either to present the Proposal to the Committee or to not pursue the Qualifying Project as presented in the Proposal. At any time during the evaluation, the Office of Procurement may request additional information or a meeting with the proposer to seek clarification regarding the submitted Proposal.

B. SELECTION CRITERIA AND EVALUATION FACTORS

The City shall make a "best value" determination in evaluating proposals received and consider the total project cost as one factor in evaluation of the proposals. The City is not required to select the Proposal that offers the lowest total project cost. Factors to be considered in evaluating a Proposal may include some or all of the following:



1. **QUALIFICATIONS AND EXPERIENCE**, such as the following:

- Experience working with the public sector on public-private real estate development projects;
- Experience, training and preparation with projects of similar size, scope and complexity;
- The extent of personnel, logistical resources, bonding capacity, and the ability to complete the Qualifying Project in a timely and professional manner;
- Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
- Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
- Leadership structure;
- Project manager's experience;
- Management and operational plans;
- Financial condition and capacity; and
- Project ownership.

2. **PROJECT CHARACTERISTICS**. Factors to be considered in evaluating the Qualifying Project characteristics may include, but are not limited to:

- Project scope and scale, land use, and product mix;
- The extent that the timing of the Qualifying Project is consistent with the City's Market Value Analysis, Comprehensive Housing Policy, Economic Development Strategic Plan, aviation land use studies, and/or other relevant City plans and policies;
- Operation of the Qualifying Project;
- Technology;
- Technical feasibility;
- Environmental impacts;
- Federal, state and local permits; and
- Maintenance of the Qualifying Project.

3. **PROJECT COST AND FINANCING**. Factors to be considered in evaluating whether the proposed financing allows adequate access to the necessary capital to finance the Qualifying Project may include, but are not limited to:

- Cost and cost-benefit to the City;
- Financing and the impact on the debt or debt burden of the City;
- Financial plan, including overall feasibility and reliability of plan;
- Proposer's past performance with similar plans and similar projects;



- The degree to which the Private Entity has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
 - Estimated project cost and life-cycle cost analysis; and
 - The identity, credit history, and past performance of any third party that will provide financing for the Qualifying Project and the nature, amount, and timing of their commitment, as applicable.
4. **COMMUNITY IMPACT.** Factors to be considered in evaluating the Qualifying Project's community impact may include, but are not limited to:
- Community benefits, including the economic impact the Qualifying Project will have on the City and Affected Jurisdictions in terms of tax revenue;
 - The number of jobs generated and level of pay and benefits of such jobs;
 - Community support or opposition, or both;
 - Compatibility with the Proposal's relationship to comprehensive planning or zoning requirements;
 - Compatibility with existing and planned facilities; and
 - Compatibility with local, regional, and state economic development efforts.
5. **OTHER FACTORS.** Other factors that may be considered by the City in the evaluation and selection of proposals may include, but are not limited to:
- The extent the offered consideration generates value and returns to the City and benefits to the public, including in-kind consideration greater than the fair market value of the asset;
 - The proposed cost of the Qualifying Project;
 - The general reputation, industry experience, and financial capacity of the Private Entity;
 - The quality of the proposed design of the Qualifying Project;
 - Opportunity cost of taking an alternative action;
 - The Private Entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
 - The Private Entity's plans to employ local contractors and residents;
 - Non-financial benefits of a proposed Qualifying Project;
 - Involvement or impact of the project on multiple public entities; and
 - Other criteria that the City deems appropriate.

VI. POSTING AND HEARING REQUIREMENTS



A. AFFECTED JURISDICTIONS

In accordance with Section 2267.055, Texas Government Code, a Private Entity submitting a proposal shall notify each Affected Jurisdiction by providing a copy of its Proposal to the Affected Jurisdiction.

A copy of the Proposal shall be sent by certified mail, express delivery or hand delivery, within 5 days after submission of the Proposal to the City. The Private Entity is responsible for documenting delivery of the Proposal. In accordance with Section 2267.055, Texas Government Code, Affected Jurisdiction(s) have 60 days after the date an Affected Jurisdiction receives the notice required by Subsection 2267.055(a), to submit in writing to the City any comments the Affected Jurisdiction has on the Qualifying Project and indicate whether the facility or Qualifying Project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.

When providing the Proposal to the Affected Jurisdiction(s), the proposer shall clearly mark information deemed to be confidential and not subject to release under the Texas Public Information Act.

B. NOTICE AND ACCESS TO ACCEPTED PROPOSALS

Within 10 days of the Office of Procurement Services accepting a Proposal, the director of that office will ensure that the City provides notice of the Proposal in accordance with Section 2267.066 of the Act by (i) making the Proposal available to the public on the City's official website, (2) publishing in a newspaper of general circulation in the area in which the Qualifying Project is to be performed a summary of the Proposal and a notification that physical copies of the Proposals may be inspected at the City Secretary's Office, and (3) making available a hard copy of each Proposal for inspection at the City Secretary's Office. Trade secrets, financial records, or other designated records excluded from disclosure pursuant to relevant provisions of the Act and under Section 552.101 of the Texas Public Information Act may not be posted or made available for public inspection except as otherwise agreed to by the City and the proposer.

C. PUBLIC HEARING

In accordance with Section 2267.066(d) of the Act, not later than 30 days prior to entering into an Interim or Comprehensive Agreement, the City shall hold a public hearing on the Proposal. The public hearing shall be held in the area in which the proposed Qualifying Project is to be performed.



VII. COMPREHENSIVE AND INTERIM AGREEMENTS

Sections 2267.058 and 2267.059 provide for the City and Private Entity to enter into a Comprehensive Agreement and, if needed, an Interim Agreement. Any Comprehensive Agreement or Interim Agreement shall define the rights and obligations of the City and the contracting party with regard to the Qualifying Project.

A. MINIMUM INTERIM AGREEMENT TERMS

Before or in connection with the negotiation of the Comprehensive Agreement, the City may enter into an Interim Agreement with the Contracting Person proposing the Development or Operation of the Qualifying Project. The Interim Agreement may:

- i. authorize the Contracting Person to begin project phases or activities for which the Contracting Person may be compensated relating to the proposed Qualifying Project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;
- ii. establish the process and timing of the negotiation of the Comprehensive Agreement;
- iii. contain any other provision related to any aspect of the Development or Operation of a Qualifying Project that the parties consider appropriate; and
- iv. contain contracting provisions required by ordinance or statute.

Any Interim Agreement entered into pursuant to the P3 Program between the City and the Contracting Person is subject to approval by City Council.

B. MINIMUM COMPREHENSIVE AGREEMENT TERMS

Any Comprehensive Agreement entered into pursuant to the P3 Program between the City and the Contracting Person is subject to approval by City Council. Each Comprehensive Agreement shall define the rights and obligations of the City and the Contracting Person with regard to the Qualifying Project. The City shall have not obligation to accept liability for Development or Operation of the Qualifying Project. The terms of the Comprehensive Agreement shall be tailored to address the specifics of the Qualifying Project and shall include but not be limited to:

1. A date by which activities related to the Qualifying Project must begin.
2. The delivery of letters of credit or other security in connection with the Development or Operation of the Qualifying Project, in forms and amounts



- satisfactory to the City, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;
3. The review of plans and specifications for the Qualifying Project by the City and approval by the City indicating that the plans and specifications conform to standards acceptable to the City, except that the Contracting Person may not be required to provide final design documents for a Qualifying Project before the execution of a Comprehensive Agreement;
 4. The rights of the City to inspect the Qualifying Project to ensure compliance with the development agreement;
 5. The maintenance of a public liability insurance policy, copies of which must be filed with the City accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the City and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued Operation of the Qualifying Project;
 6. The monitoring of the practices of the Contracting Person by the City to ensure that the Qualifying Project is properly maintained;
 7. The terms under which the Contracting Person will reimburse the City for services provided;
 8. The policy and procedures that will govern the rights and responsibilities of the City and the Contracting Person in the event that the Comprehensive Agreement is terminated or there is a material default by the Contracting Person, including the conditions governing assumption of the duties and responsibilities of the Contracting Person by the City and the transfer or purchase of property or other interests of the Contracting Person to the City;
 9. The terms under which the Contracting Person will file appropriate financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually;
 10. Terms providing for for any user fee, lease payment, or service payment established by agreement of the parties. In negotiating a user fee under this section, the parties shall establish a payment or fee that is the same for persons using a facility of the Qualifying Project under like conditions and that will not materially discourage use of the Qualifying Project. The execution of the Comprehensive Agreement or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with the Act. A user fee or lease payment established in the Comprehensive Agreement as a source of revenue may be in addition to, or in lieu of, a service payment;
 11. The terms and conditions under which the City may contribute financial resources, if any, for the Qualifying Project;
 12. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
 13. The terms and conditions under which the City will be required to pay money to the Private Entity and the amount of any such payments for the Qualifying Project.



14. Appropriate protections against potential bankruptcy.
15. A requirement that any change in the terms of the Comprehensive Agreement that the parties agree to must be added to the Comprehensive Agreement by written amendment.
16. A periodic reporting procedure that incorporates a description of the impact of the Qualifying Project on the City and Affected Jurisdictions;
17. A written declaration of the specific public purpose served by the project;
18. Other requirements of the P3 Program, Act, or other applicable law, or that the City otherwise deems appropriate; and
19. Other provisions required by ordinance or statute.

C. NOTICE AND PUBLIC HEARING.

Upon concluding negotiations, the proposed Interim or Comprehensive Agreement shall be posted on the City's website and made available at the City Secretary's Office for inspection by the public for a period of two weeks prior to entering into such agreement in accordance with Section 2267.066(e) of the Act.

In addition, the City shall hold a public hearing on the final version of the proposed Comprehensive Agreement and vote on the proposed Comprehensive Agreement after the hearing. The hearing must be held not later than the 10th day before the date the City enters into a Comprehensive Agreement with a Contracting Person.

VIII. CITY COUNCIL AUTHORIZATION AND APPROVAL

Upon completion of the requirements of these Guidelines and the prescribed notice and hearing requirements, the City may present a Qualifying Project in the form of a resolution approving an Interim or Comprehensive Agreement to its City Council for consideration. No agreements shall be valid prior to the approval of the City Council through a duly passed City resolution.

IX. GOVERNING PROVISIONS.

The laws of the United States and the State of Texas are incorporated in these Guidelines by reference for all purposes. Compliance by each Private Entity is mandatory. In the event of any conflict between these Guidelines and any federal or state statutory or administrative authority, the terms of the respective statutory or administrative authority shall control. The following authorities do not apply to a Qualifying Project under the Act: Chapters 2155, 2156, and 2166, Texas Government Code, and any interpretations, rules, or guidelines developed under Chapter 2262, Texas Government Code.